

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
MAR 10 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) MM Docket No. 92-244
) RM-8027
Amendment of Section 73.202(b))
(Table of Allotments))
FM Broadcast Stations)
)
Charlotte Amalie, Virgin Islands)

To: Chief, Mass Media Bureau
Policy and Rules Division
Allocations Branch

MOTION TO STRIKE UNAUTHORIZED LETTER OF RICHARD L. BIBY

This is in response to Richard L. Biby's March 4, 1993, letter written on behalf of himself and his firm Communications Engineering Services, P.C., hereinafter ("Biby"). Biby as an individual or through his firm, has no standing in this proceeding. Accordingly, any statements made by Biby as they refer to MM Docket No. 92-244 should be stricken from the record.¹

Because Biby has attacked the character and reputation of Calypso's counsel and because a copy of Biby's letter was sent to the D.C. Bar Counsel, a reply to the charges made in his letter is required. The gravamen of Biby's contention is that in the past, Biby provided services to Calypso "but not in this proceeding." Biby concludes that it is a

¹ Biby's letter can only delay the outcome of this proceeding causing injury to his current client, Paradise Broadcasting Corporation ("Paradise"), as well as his former client Calypso Communications ("Calypso").

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92-244
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misstatement for Calypso to claim that Biby was Calypso's engineer in this proceeding. A brief review of the facts will show otherwise.

Biby has been Calypso's engineer from the inception of this project. Calypso filed its application for Charlotte Amalie, Virgin Islands on July 7, 1987. Biby signed that application as Calypso's "Consulting Engineer." This, however, is not where Calypso's relationship with Biby ended. Several months after Calypso filed its application, it discovered that Channel 247 was being used in Tortola, British Virgin Islands, preventing the use of Channel 246B at Charlotte Amalie. Calypso began working with the Commission's staff to see if the problem with the British Virgin Islands could be resolved. Also at that time, Calypso began looking for an alternative channel. In May, 1988, it retained Biby to see if Biby could find a substitute channel. It was through Biby's work that the availability of Channel 267B for Charlotte Amalie was discovered.

From 1988 through 1992, the Commission's staff sought to work out an arrangement with the British Virgin Islands. Though there were numerous discussions and a letter was sent, by mid 1992 it was clear to the staff that a resolution with the British Virgin Islands was not forthcoming. The Commission's staff advised counsel for Calypso to file a Petition for Rule Making requesting a

replacement channel for Channel 246B at Charlotte Amalie. In May, 1992, Biby was asked to update his study to make sure that Channel 267B was still available for use in Charlotte Amalie. Attached hereto as Exhibit 1 is a letter dated June 1, 1992, and signed by Biby. Biby's letter indicates that he is forwarding the following information:

1. Site constraints study for Channel 267B, based on (or near) the Calypso Communications site on St. John, as run on May 10, 1988.
2. Channel 267B study as run on June 1, 1992.
3. A list of all records from the FCC database that involve reference locations on both the U.S. and the British Virgin Islands.

Biby concludes his letter as follows:

It looks to me as if Channel 267B is clear for use at Charlotte Amalie.

While Biby in his June 1, 1992, letter referred to Calypso's exhibit as a "Channel 267B Study," in his March 4, 1993, letter he now claims that, in fact, it was not a channel study, "but simply a tabulation from the FCC FM Engineering Database." Biby, in his March 4, 1993 letter also states that "at no time did Calypso retain CES to prepare a report or an engineering statement for use in this rule making." Biby's words ring hollow.² In light of his statement that "Channel 267B is clear for use at Charlotte

² To "retain" is to engage for payment. Attached as Exhibit 2 are two bills dated June 10, 1992, and July 12, 1992, from Biby for "professional services rendered" for research for "channel station in U.S. Virgin Islands."

Amalie," what did Biby think that Calypso was going to do with this information?

The first that Calypso heard of Biby being unable or unwilling to act as its consulting engineer was when it received Biby's cryptic letter of December 3, 1992. In that letter, Biby for the first time states that he is not Calypso's consulting engineer. Further, Mr. Biby claims that he cannot represent Calypso in this matter because of a "conflict of interest". Counsel for Calypso did not know what to make of this letter but assumed that a pre-existing client either in St. Thomas or St. Croix, though not opposed to Calypso in this proceeding, was opposed to Biby representing two clients in the same market. Not expecting any counterproposals, Calypso did not believe it would need to retain the services of a new engineer. Nothing in Biby's letter indicated that he was preparing to take the information that Calypso had paid for and use it against Calypso in the same rule making proceeding. Thus, in its Petition for Extension of Time when Calypso stated "Counsel today discovered that Petitioner's engineer (Biby) has without authorization, also provided engineering services for one of the opposing parties," that was certainly a true statement. Calypso had no way of knowing that Biby was intending to use against it, the very information Calypso had paid to develop.

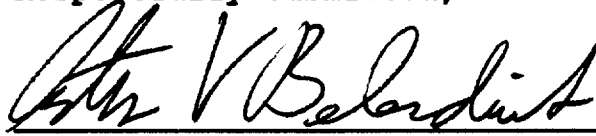
Finally, in his March 4, 1993, letter, Biby states that Calypso claims that his unauthorized representations of Paradise renders Paradise's counterproposal disingenuous. Biby has misread Calypso's Reply Comments. What Calypso said was "Paradise disingenuously argues that there are no other AM or FM allotments at Cruz Bay, and that its only alternative would be the substitution of Channel 267B for Channel 222B at Cruz Bay." What Calypso stated and what remains true is that Biby failed to mention the availability of at least two other channels that can be allocated to Cruz Bay. Biby's letter of March 4, 1993, fails to mention these key facts. Nor does Biby explain why in his original engineering report for Paradise he did not mention the availability of Channel 275A and Channel 296A, both of which meet the requirements for allotment in Cruz Bay, Virgin Islands.

Calypso has no quarrel with Paradise, except as both are seeking the allocation of the same channel. It does have a quarrel with Paradise's consulting engineer who, without any authorization, used information which was developed on behalf of Calypso and paid for by Calypso against Calypso in this proceeding. Further, when a clear alternative for Paradise existed, that is, the allocation of a Class A station to Cruz Bay, Biby in his statement to the Commission failed to mention that such an alternative was

possible. There is no need for Calypso to categorize Biby's actions. They speak for themselves, loud and clear.

Respectfully submitted,

By:



Arthur V. Belendiuk

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
202-785-2800

March 10, 1993

CALYPSO/PN/MTNSTRK.LTR

EXHIBIT 1

Richard L. Biby
Communications Engineering Services, P.C.

6105-G Arlington Blvd.
Falls Church, VA 22044
(703) 534-7880
Telefax (703) 534-7884
June 1, 1992

To: Bob Miller FAX (809) 773-9093
Arthur Belendiuk, Esq. FAX (202) 785-2804
From: Richard L. Biby, P.E.

As it happened, our expert file-retriever was looking for the wrong U.S. Virgin Islands FM project; the Calypso Communications file was here in the office all along.

I am sending herewith, copies of the following:

1) site constraints study for Channel 267B, based on (or near) the Calypso Communications site on St. John, as run on May 10, 1988

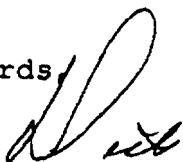
2) Channel 267B study as run on June 1, 1992

3) A listing of all records from the FCC FM Database that involve reference locations on both the U.S. and the British Virgin Islands.

It is something of a puzzle as to why the FCC is still showing WIYC on Channel 266. My guess would be that they are keeping that record in place (even though WIYC is apparently now operating and licensed on Channel 282) to keep the British at bay. It looks to me as if Channel 267 B is clear for use at Charlotte Amalie.

Bob, does this mean that I have to go to Charlotte Amalie to do field tests? Along about November through March would be a good time, I would say.

Regards,



Richard L. Biby, P.E.

COMMUNICATIONS DATA SERVICES
4900 NORTH SIXTEENTH STREET
ARLINGTON, VIRGINIA 22205
(703)-522-7253

PAGE 1

FM CHANNEL STUDY

10-MAY-88

JCS TITLE: NEW - CHARLOTTE AMALIE, VI
CHANNEL: 2672
ERP: 50.0 KILOWATTS
HAAT: 391.0 METERS
COORDINATES: 18-20-30 64-43-55

CALL STATUS	CITY STATE	FCC FILE #	CHAN CLASS	M/R/F H-BPP-FAH V-BPP-FAH	LATITUDE LONGITUDE	BEARING RC AMSL	DIST. (KM)	REQ. (KM)	
WISAFM LIC	CAROLINA PR	ELIO-890711721	215 F	20.00 20.00	078 077	18- 6-48 06- 3- 7	259.9 937	141.74 117.74	24.0 CLEAR
WXYX LIC	PAYAMON PR	SLH-840925222	224 F	50.00 50.00	138 239	18-17-29 06-11- 3	466.1 502	153.47 79.47	74.0 CLEAR
WRID CF	PONCE PR	BPH-800925322	225 F	50.00 50.00	-14 -14	18- 1-38 08-28- 9	260.5	206.00 37.00	169.0 CLEAR
WRID APP COMMENTS:	PONCE PR	CMFH-860716122	225 F	34.00 34.00	489 539	18- 6-15 06-43- 8	263.1 935	211.64 42.64	169.0 CLEAR
AMENDED 870130									
WIYC LIC	CHARLOTTE AMALIE VI	SLH-7193	265 F	50.00	487	18-23-34 64-53-22	274.5	25.41 -143.59	169.0 SHORT
COMMENTS: *TO CHANNEL 282 PER DBS-209									
WKSAMF LIC	ISABELA PR	SLH-860608KA	268 F	50.00 50.00	129 129	18-26-36 07- 8-50	272.9 226	255.30 86.30	169.0 CLEAR
WVIQ ADD	CHRISTIANSTED VI	PM-4740	268 F	25.00		17-45-20 64-47-55	186.1	65.22 -103.78	169.0 SHORT
BUCKET: DBS-211									
COMMENTS: PRM - DISMISSED BY REPORT AND DROPPED 860710									
WZAR LIC	PONCE PR	SLH-7892	270 F	14.00 14.00	753 753	18- 9-18 06-03-15	264.1	193.67 119.67	74.0 CLEAR

>>> END CHANNEL 2672 STUDY <<<

Communications Engineering Services, P.C.
Falls Church, VA

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May 29, 1992

Constraints Study FM Channel 267B

Title: Bob Miller USVI
Reference City: Charlotte Amalie, VI
Translators Are Included
Audit File: fms05292.A01

Latitude: 18-20-30
Longitude: 64-43-59
FCC Database: 920429

Call City of License	Auth	Licensee Name St FCC File No.	Chan Freq	ERP-kW EAH-m	Latitude Longitude	Az-to -from	Dist (km)	Req (km)
WIYC Charlotte Amalie	LIC	Palm Beach Group Broa VI BLH-7193	266B 101.1	50. 457	18-21-34 64-58-22	274.5 94.4	25.41 -143.6	169 SHORT
WRIO Ponce	LIC	Family Broadcasting G PR BLH-860609KA	266B 101.1	50. -14	18-01-40 66-39-14	260.5 79.9	206.16 37.16	169 CLEAR
Ponce	USED	PR	266B 101.1		18-01-40 66-39-14	260.5 79.9	206.16 37.16	169 CLEAR
Coordinates updated from LIC record BLH860609KA								
WRIO Ponce	APP	Family Broadcasting G PR BMPH-860716IA	266B 101.1	34. 539	18-06-15 66-43-08	263.1 82.5	211.69 42.69	169 CLEAR
AMENDED 870130-APP DIS 880711-PET FOR RECON 880819-RECON DENIED 890222								
PET FOR RECON 890315								
Charlotte Amalie	ADD	Commission VI	267B 101.3		18-20-00 64-50-00	265.0 85.0	10.64 -230.4	241 SHORT

End of Constraints Study FM Channel 267B

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Communications Engineering Services, P.C.
Falls Church, VA

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Jun 1, 1992

FM Facilities Within 50 km

Title: Charge Bob Miller, USVI
Channels: 200 to 300
Translators/Boosters Not Included
Reference City: Charlotte Amalie, VI
Audit File: wit06012.A01

Latitude: 18-20-30
Longitude: 64-43-59
FCC Database: 920429

Call Auth Owner	City of License, St FCC File No. Channel Class	H-AMSL V-AMSL Docket No.	H-AAT V-AAT Last Update Date	H-kW V-kW Last Update Date	Latitude Longitude	Br-to -from	Dist (km)
WIUJ LIC Vi. Council Inc., of the Boy Scouts *To channel 275D	St. Thomas, VI BLED-1816 205 D	442		.010	18-21-23 64-56-43 05/23/91	274.2 94.1	22.5
	Tortola 215 B		475	50.0	18-25-32 64-38-45 11/04/91	44.6 224.6	13.1
Accepted by Commission 910523							
NEW	British Virgin Islands 219 C		600	100.	18-25-00 64-39-00 03/30/88	46.4 226.4	12.1
BRITISH VIRGIN ISLANDS							
USED	Cruz Bay, VI 222 B				18-20-35 64-44-14 04/22/88	289.4 109.3	0.5
SITE RESTRICTED - EFFECTIVE 870528							
WDCM CP MOD BMPH-901214IH Paradise Broadcasting Corporation	Cruz Bay, VI 222 B	434 434	397 397	48. 48.	18-20-17 64-43-40 02/14/92	125.8 305.8	0.7
WDCM DEL Commission	Cruz Bay, VI 222 B				18-20-59 64-44-23 01/12/90	321.9 141.9	1.1
WDCM ADD Commission	Cruz Bay, VI 224 B				18-20-59 64-44-23 01/12/90	321.9 141.9	1.1
NEW	British Virgin Islands 232 C		600	100.	18-25-00 64-39-00 03/30/88	46.4 226.4	12.1
BRITISH VIRGIN ISLANDS							
ADD Rosidalia Villafane SITE RESTRICTED 2.4KM NORTHEAST	Cruz Bay-St. John, VI 234 A				18-20-56 64-46-43 03/11/87	279.5 99.5	4.9

Communications Engineering Services, P.C.
Falls Church, VA

Page 1
Jun 1, 1992

FM Facilities Within 50 km

Title: Charge Bob Miller, USVI
Channels: 200 to 300
Translators/Boosters Not Included
Reference City: Charlotte Amalie, VI
Audit File: wit06012.A01

Latitude: 18-20-30
Longitude: 64-43-59

FCC Database: 920429

Call Auth Owner	City of License, St FCC File No.	Channel Class	H-AMSL V-AMSL Docket No.	H-AAT V-AAT Last Update	H-kW V-kW Date	Latitude Longitude	Br-to -from	Dist (km)
USED	Charlotte Amalie, VI 241	B1	86-290			18-20-36 64-55-48 04/22/88	270.5 90.5	20.8
EFFECTIVE 870518								
WIVI CP Tim Gordon English	Charlotte Amalie, VI BPH-910116JL 241	B1	482 482	457 457	2.40 2.40	18-21-33 64-58-18 02/06/92	274.5 94.4	25.3
WVNX CP Calypso Communications	Charlotte Amalie, VI BPH-870707MI 246	B	427 427	391 391	50. 50.	18-20-30 64-43-59 08/16/91	0.0 0.0	0.0
USED	Charlotte Amalie, VI 246	B	86-290			18-20-00 64-50-00 07/03/91	265.0 85.0	10.6
SITE RESTRICTED - EFFECTIVE 870518								
DEL Commission	Charlotte Amalie, VI 246	B				18-20-00 64-50-00 01/12/90	265.0 85.0	10.6
NEW	British Virgin Islands 247	C		600 600	100. 100.	18-25-00 64-39-00 03/30/88	46.4 226.4	12.1
BRITISH VIRGIN ISLANDS								
USED	Charlotte Amalie, VI 250	B				18-21-25 64-58-00 12/01/90	274.0 93.9	24.7
Coordinates updated from LIC record			BLH800911AH					
WGODFM LIC Three Angels Corporation	Charlotte Amalie, VI BLH-800911AH 250	B	504 504	475 475	50. 50.	18-21-25 64-58-00 11/02/89	274.0 93.9	24.7
WIYC LIC Palm Beach Group Broadcasting Co.	Charlotte Amalie, VI BLH-7193 266	B	533	457	50.	18-21-34 64-58-22 09/30/88	274.5 94.4	25.4

Communications Engineering Services, P.C.
Falls Church, VA

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Jun 1, 1992

FM Facilities Within 50 km

Title: Charge Bob Miller, USVI
Channels: 200 to 300
Translators/Boosters Not Included
Reference City: Charlotte Amalie, VI
Audit File: wit06012.A01

Latitude: 18-20-30
Longitude: 64-43-59

FCC Database: 920429

Call Auth Owner	City of License, St FCC File No.	Channel Class	H-AMSL V-AMSL Docket No.	H-AAT V-AAT Last Update	H-kW V-kW Date	Latitude Longitude	Br-to -from	Dist (km)
ADD Commission	Charlotte Amalie, VI 267	B				18-20-00 64-50-00 01/12/90	265.0 85.0	10.6
USED	Charlotte Amalie, VI 271	B	82-764			18-20-36 64-55-48 04/21/87	270.5 90.5	20.8
EFFECTIVE 7-5-83								
WTBN CP MOD BMPH-880224IA Trans Caribbean Broadcasting Company	Charlotte Amalie, VI 271	B	490 490	466 466	50. 50.	18-21-23 64-56-43 11/06/91	274.2 94.1	22.5
WTBN CP Trans Caribbean Broadcasting Company	Charlotte Amalie, VI BPH-911125ID 271	B	530 530	509 509	33.0 33.0	18-21-33 64-58-18 02/07/92	274.5 94.4	25.3
WIUJ CP Vi. Council Inc., of the Boy Scouts From channel 205D-Commercial Channel Operating Educational	St. Thomas, VI BPED-910506MI 275	D	467	451	.017	18-21-23 64-56-43 03/19/92	274.2 94.1	22.5
WIYC LIC Palm Beach Group Broadcasting Co.	Charlotte Amalie, VI BLH-880617KD 282	B	522 522	490 490	45. 45.	18-21-31 64-58-21 04/06/92	274.3 94.2	25.4
USED	Charlotte Amalie, VI 282	B	85-209			18-21-34 64-58-22 03/01/89	274.5 94.4	25.4
COORDINATES ARE FOR WCWI PER D85-209								
WVGN APP Sandy Isle Broadcasting, Inc.	Charlotte Amalie, VI BMPH-910523IF 287	B	533 533	512 512	10.0 10.0	18-21-33 64-58-18 11/13/91	274.5 94.4	25.3
USED	Charlotte Amalie, VI 287	B	86-290			18-21-33 64-58-18 10/15/90	274.5 94.4	25.3
RESERVED FOR WVGN PER D86-290								

Communications Engineering Services, P.C.
Falls Church, VA

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Jun 1, 1992

FM Facilities Within 50 km

Title: Charge Bob Miller, USVI
Channels: 200 to 300
Translators/Boosters Not Included
Reference City: Charlotte Amalie, VI
Audit File: wit06012.A01

Latitude: 18-20-30
Longitude: 64-43-59
FCC Database: 920429

Call Auth Owner	City of License, St FCC File No.	Channel Class	H-AMSL V-AMSL	H-AAT V-AAT	H-kW V-kW	Latitude Longitude	Br-to -from	Dist (km)
			Docket No.	Last Update		Date		
WVGN	Charlotte Amalie, VI		533	512	32.	18-21-33	274.5	25.3
CP	BPH-901113ID	287 B	533	512	32.	64-58-18	94.4	
Sandy Isle Broadcasting, Inc.						11/01/91		
WVGN	Charlotte Amalie, VI		494	467	1.35	18-21-33	274.5	25.3
LIC	BLH-850331KF	296 A	494	467	1.35	64-58-18	94.4	
Sandy Isle Broadcasting, Inc.						09/05/90		
*TO Channel 287B per D86-290								

--> End of Facilities <--

EXHIBIT 2

Communications Engineering Services
6105-G Arlington Boulevard
Falls Church, VA
22044

Invoice to:

Bob Miller
Calypso Communications
Box 26174
Gallows Bay, St. Croix 06824

July 13, 1992
Invoice Number:131

	<u>Hours</u>	<u>Amount</u>
Professional services		
06/01/92 Research - channel status in FCC process	1.25	187.50
	<hr/>	<hr/>
For professional services rendered	1.25	\$187.50
Previous balance		\$263.50
		<hr/>
Balance due		\$451.00
		<hr/>

Communications Engineering Services
6105-G Arlington Boulevard
Falls Church, VA
22044

703-534-7880

Invoice to:

Bob Miller
Calypso Communications
Box 26174
Gallows Bay, St. Croix 06824

June 10, 1992
Invoice Number: 119

	<u>Hours</u>	<u>Amount</u>
Professional services		
05/29/92 Research - channel status in US Virgin Islands	1.50	225.00
	<hr/>	<hr/>
For professional services rendered	1.50	\$225.00
Expenses:		
05/01/92 Computer charges		38.50
		<hr/>
Total costs		\$38.50
		<hr/>
Total amount of this bill		\$263.50
		<hr/>
Balance due		\$263.50

113 50

*Paid \$150
✓ 1248
7/22/92
bal 113.50*

*Pd \$50
8/3/92
✓ 1300*

CERTIFICATE OF SERVICE

I, Patricia A. Neil, a secretary in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 10th day of March, 1993, copies of the foregoing were mailed, postage prepaid, to the following:

Mr. Michael C. Ruger*
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
2025 M Street, N.W.
Room 8322
Washington, D.C. 20554

Mr. James Ballis*
Chief, Notifications Group
International Branch
Mass Media Bureau
2025 M Street, N.W.
Room 8120
Washington, D.C. 20554

D.C. Bar Counsel
1707 L Street, N.W.
Washington, D.C. 20036

Scott Cinnamon, Esquire
1901 L Street, N.W.
Suite 200
Washington, D.C. 20036
Counsel for El Mundo
Broadcasting Corporation

Linda J. Eckard, Esquire
Roberts & Eckard, P.C.
1919 Pennsylvania Ave., N.W.
Suite 222
Washington, D.C. 20006
Counsel for Paradise
Broadcasting Corporation

Barry D. Wood, Esquire
Jones, Waldo, Holbrook &
McDonough, P.C.
2300 M Street, N.W.
Suite 900
Washington, D.C. 20037
Counsel for Virgin
Islands Stereo
Communications

Frank R. Jazzo, Esquire
Fletcher, Heald & Hildreth
11th Floor
1300 North 17th Street
Rosslyn, Virginia 22209
Counsel for Carlos J.
Colon Ventura

Donald E. Martin, Esquire
Donald E. Martin, P.C.
2000 L Street, N.W.
Suite 200
Washington, D.C. 20036
Counsel for Asociacion
Puertorriquena del Este
de los Adventistas del
Septimo Dia

Mr. Richard L. Biby
Communications Engineering
Services, P.C.
6105-G Arlington Blvd.
Falls Church, VA 22044


Patricia A. Neil

*by hand